

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09.05.2014
Date of Decision: 21.07.2014

+ RC.REV. 192/2012 with CM Nos.7819 & 7820/2012
BISHAMBHAR DAYAL GUPTA Petitioner
Through: Mr. R. N. Dubey, Adv.

versus

NARESH KUMAR SHARMA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. The revision petition impugns an order dated 13.03.2012 whereby respondent/tenant has been granted leave to defend in an eviction petition filed by the petitioner/landlord under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, 1958.

2. The petitioner had sought eviction of the tenant from the suit property being a shop located on the ground floor measuring 9 X 13 feet forming a part of the property C-130, Amar Colony, East Gokul Pur, Delhi-110 094 which was leased out at a monthly rent of Rs. 1300/-. The petitioner's case was that his family consisted of 6 members which included his wife, one son aged about 10 years, three

married daughters and an old and ailing mother of 95 years of age. He stated that his relatives, guests and other visitors used to come to his residence for stay during medical treatment and during other social requirements and engagements too and that the accommodation available with him comprising two rooms on the ground floor with covered courtyard, one latrine, one bathroom and a kitchen was insufficient for his needs; that the source of his livelihood was the rent being collected from his various tenants; that he required a separate room for his school going son so that the child's studies were not disturbed by all-so-frequent visitors; that his aged and ailing mother too required a separate room; that the petitioner and his wife also required one room for themselves; that another room was required for guests, relatives and his three married daughters and their respective families whenever they visited him; that first and second floors were not convenient for his ailing mother; that the petitioner/landlord had no other suitable accommodation on the ground floor except the one occupied by the respondent/tenant, hence the tenanted premises required to be vacated forthwith for his multiple bonafide need, particularly for his mother.

3. Pursuant to a notice dated 11.6.2011 under section 25-B of the Act, the tenant filed an application for leave to defend on 1.7.2011. The tenant stated that he was running a business of transportation in the name and style of Balaji Tempo Transport Services from the tenanted premises since the year 2000; that he had been paying rent regularly, but the petitioner was not issuing any rent receipt to him; that initially the rent was Rs.750/- p.m. but, then it increased to Rs.1300/- p.m.; that he had sent rent for three months i.e. from July, 2011 to September, 2011 to the landlord through money order but the latter refused to accept it as well as the electricity charges simply to create a confusion and dispute regarding supply of electricity to rented shop; that eviction of commercial property was being sought for residential purposes which was impermissible; that the two floors above the ground floor were sufficient to accommodate the needs of the landlord, if any; that the landlord himself was running businesses of a confectionary shop and property dealing viz. Gupta Properties from a shop on the ground floor; additionally he had rented out two other shops on the ground floor, while the residential area behind the two shops was rented out to the tenant and his family; that the entire

area of first floor as well as second floor had been let out for commercial use; that the three daughters were settled in their matrimonial homes hence they did not require any space to reside with the landlord; that the mother of the petitioner being a permanent resident at her native place, did not require any accommodation with the petitioner; that the landlord owns flat No. A-6085, Ground Floor, Gali No. 1, East Rohtash Nagar, Delhi-32 in the name of his wife and the same has been let out for tenancy and hence the petitioner possessed much more residential accommodation than what he required. Furthermore, it was argued that the petitioner had other properties in his name as well as in the name of his wife and he had good earnings from the business of confectionary and property dealings and other resources and hence there was no bonafide requirement of the petitioner/landlord.

4. In reply, the landlord denied the ownership of property A-6085, Ground Floor, Gali No. 1, East Rohtash Nagar, Delhi-32; no site plan was filed by the tenant. It was stated that no document or prima facie evidence was filed by the tenant to show the availability of any other suitable property with him; that the issue of sharing of electricity

charges consumed by the tenant with M/s. Vikas Transport was irrelevant and it was concocted merely to create a confusion and to mislead the Court; that the tenant had no right to dictate terms to the landlord as to how he should use his property.

5. Considering the facts of the case, the Trial Court was of the view that the landlord had not made a case of bonafide requirement; that insofar as the petitioner had not filed any documents to substantiate that his mother was living with him and his three daughters having already been settled in their matrimonial homes, the requirement of the petitioner had reduced and therefore the requirement put forth by the landlord had become a case of additional requirement which could not be decided without going through the full trial. The Trial Court referred to a judgment of the Supreme Court in *Santosh Devi Soni v. Chand Kiran 2001 (1) SCC 255* which held that in cases where additional accommodation is sought under the DRC Act, normally the leave to defend should not be refused. Hence, the leave to defend was granted.

6. Notice in the Revision Petition was issued on 30.04.2014. The respondent was represented through counsel on 28.09.2012 and

29.11.2012. In default of appearance, he was proceeded ex-parte on 30.10.2013. None appeared for the respondent/tenant on subsequent date. Arguments of the petitioner/landlord were heard.

7. The present petition raises the following issues:

(i) whether the petitioner/landlord has made a case of bonafide requirement under section 14(1)(e) of the Delhi Rent Control Act i.e. whether the submission that the tenanted premises is needed by the petitioner/landlord to accommodate his family including his aged mother fall as an example of bonafide requirement; and

(ii) whether the mother of the petitioner was residing with him or not.

8. The learned counsel for the petitioner relies upon the following judgments: (i) ***Punjab State Co-Operative Supply & Marketing Federation Limited (M/s. Markfed) v. Amit Goel & Anr. 204 (2013) DLT 63*** which held that “*the law is settled that unless shown to the contrary, the presumption would be in favour of the landlord’s need.*”

9. The petitioner submitted that the Trial Court fell into error: (i) by concluding that the family of the petitioner included only his wife and his minor son residing with him; (ii) by not taking notice of the

Election Identity Card of the mother and his Ration Card which showed that the petitioner's mother was residing with him; (iii) that these two documents were more than sufficient to establish that the mother was living with the petitioner and no other document would be required at the summary proceeding stage; (iv) that a simple averment by the tenant that the mother was living in her native place in the village and not with the petitioner would not be sufficient to doubt or displace the petitioner's/landlord's averment that his mother was residing with him and presumption in law and in facts would be all the more compelling in favour of the landlord, in view of the aforesaid two documents having been filed before the learned Trial Court. The petitioner submits that, therefore, no triable issue was made out and leave to defend ought not to have been granted.

10. In an eviction petition for bonafide need, the Court will look into the prima facie circumstances of the parties. Section 14 (1)(e) of the DRC Act provides:

“Protection of tenant against eviction.- (1)
Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant: Provided that the Controller may, on an

application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-
(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

11. While section 14 does not give an exhaustive illustration of what may constitute ‘bonafide requirement’ there is a plethora of cases to show which illustrate bona fide requirement. The Supreme Court in *Shiv Sarup Gupta v Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222 held:

“13. Chambers 20th Century Dictionary defines bona fide to mean “in good faith : genuine”. The word “genuine” means “natural: not spurious : real : pure : sincere”. In Law Dictionary, Mozley and Whitley define bona fide to mean “good faith, without fraud or deceit”. Thus the term bona fide or genuinely refers to a state of mind. Requirement is: not a mere desire. The degree of intensity contemplated by “requires” is much more higher than in mere desire. The phrase “required bona fide” is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any

member of the family would entitle him to seek ejection of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord.

(Emphasis supplied)

12. In the present petition, it is the case of the landlord that the space available to him was insufficient bearing in mind the size of his family. The petitioner has drawn attention to the site plan of the property and to the fact that there are various tenants occupying different parts of the property; that a portion of the property on the ground floor is rented and the other portion is used as the landlord's residence; that he has only one room apart from kitchen and washroom, thus, the space available on the ground floor is insufficient

to house his family including his aged and ailing mother. It is the submission of the landlord that the tenanted shop on the ground floor will provide him the required additional accommodation.

13. While the tenant would argue that the petitioner/landlord could use the first and the second floor of the building to accommodate his family, the prerogative to determine the suitability is entirely with the landlord.

14. This Court finds that there is bona fide requirement when the landlord claims that the space available on the first floor and the second floor cannot be used as the landlord has to take care of his aged mother; and the one room on the ground floor is not sufficient for a family to live comfortably. There is also no merit in the contention that since all the daughters of the landlord are settled in their respective matrimonial homes, they would not need any accommodation in their father's home. In *Tilak Raj v. Krishan Lal* **1982 RLR 33** it was held that the married daughter keep on visiting their father's home and are well entitled to some accommodation (guest room) and hence landlord was entitled to say that he wanted some accommodation for their use also. In the present petition, the

landlord is asking for space to accommodate all members of his family. In *Shiv Sarup Gupta* (supra) the Supreme Court held:

“It could not have been the intendment of the rent control law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy.”

15. It would be rather unjust to expect the landlord were to accommodate himself as per the wishes of his tenant especially when her bonafidely requires the tenanted premises. The accommodation on the first and the second floor is unsuitable as it would be inconvenient for the aged mother of the landlord.

16. A tenancy need not be suffered or protected which deprives a landlord's visiting married daughters from staying with him because of constraints of residential accommodation. A tenant cannot be permitted to become the cause for denial of familial pleasures of the landlord and his family. The Supreme Court in ***Ram Nath v Rajendra Pershad* (2003) 12 SCC 127** held:

“4. Having regard to the material placed on record and looking to the findings recorded by the trial court, it cannot be said that the requirement of the appellant of the premises in question was not bona fide. The trial court was right in passing the decree of eviction against the respondent. The first appellate court was wrong in holding that the requirement was not bona fide taking the view that the available accommodation with the appellant was sufficient as the three daughters were married. We are of the view that the approach of the first appellate court was not realistic. Merely because three daughters were married, it could not be said that they do not come and stay with the appellant even occasionally. The size of the family has grown and the married daughters and sons-in-law of the appellant also could visit the house of the appellant occasionally.”

17. The tenant cannot dictate how the property belonging to the landlord should be put to use. Once the landlord shows that there is bona fide requirement for the tenanted premises, the Court is bound to allow the eviction petition. The Supreme Court in *Sarla Ahuja v United India Insurance Co. Ltd. (1998)8 SCC 119* held:

“14. the crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide.

When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

18. In ***Sudesh Kumari Soni v Prabha Khanna and Anr*** **RC REV. 44/2004**, the learned Single Judge held that:

“It is very natural and consistent that the petitioner requires more space for affording at least a basic standard of living with a sense of decency. A drawing room, pooja room and guest room are the bare necessities for a comfortable living.”

19. This Court is of the considered view that there is bona fide requirement of the landlord and the space presently available to him is insufficient for his family members. The order of the SCJ-cum-RC is in error in holding that there is no case of bona fide requirement. No triable issue is raised by the respondent/tenant. For the above mentioned reasons, the revision petition is allowed and the leave to defend is set aside. The tenanted premises viz. C-130, Amar Colony, East Gokul Pur, Delhi-110 094 is directed to be vacated and the

respondent/tenant to be evicted therefrom. However, as per the statutory provision, this eviction order would be executable only after six months.

NAJMI WAZIRI
(JUDGE)

JULY 21, 2014/acm